

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.

Plaintiffs,

vs.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 4:05-CV-00329-TCK-SAJ

**POULTRY GROWERS’¹ MOTION FOR FURTHER CLARIFICATION OF
COURT’S MAY 31, 2006 ORDER**

COME NOW Poultry Growers through this Motion for Further Clarification of the Court’s May, 31 2006 Order [Dkt No. 757], as modified by the Court’s June 7, 2006 Supplemental Order [Dkt No. 796]. The Court, in its May 31, 2006 Order [Dkt No. 757], denied Poultry Growers’ motions to quash subpoenas [Dkt No. 493-1 and Dkt No. 539-1] and their motions for protective order [Dkt No. 503-1 and Dkt No. 539-2], and required Poultry Growers to submit to invasive physical sampling of their respective properties. Simply put, Poultry Growers now ask the Court to clarify its orders and direct the State of Oklahoma to provide the data that the State of Oklahoma obtained through the invasive, physical sampling of Poultry Growers’ properties. The State of Oklahoma’s professed concern for public health and safety is sufficient reason for the State to provide the Poultry Growers with raw data about their own respective properties. Frankly, the data should have been freely provided. It was not.

¹ These non-parties are: Bill R. Anderson; Steve Butler, allegedly d/b/a Green Country Farms; Ren Butler and Georgia Butler; Julie Anderson Chancellor; Roger D. Collins; Franklin A. Glenn and Kenneth D. Glenn and Sondra D. Glenn; Juana Loftin; Larry McGarrah and Priscilla McGarrah; Jim L. Pigeon and Michele R. Pigeon; Joel J. Reed and Rhonda Reed and Caleb Reed and Cory Reed; W. A. Saunders and Bev Saunders; Robert V. Schwabe, II; and David R. Wofford and Robin L. Wofford.

I. STATUS OF EFFORTS TO RESOLVE DISCOVERY DISPUTE

On October 27, 2006, the State and the Poultry Growers met and conferred in an attempt to resolve the discovery dispute which is the subject of this motion. On November 6, 2006, counsel for the Poultry Growers requested in writing that the State provide all analytical data resulting from sampling events on the land of the Poultry Growers (attached as Exhibit 1). The State responded by letter on November 7, 2006, but was silent as to the State's willingness to provide the analytical data requested (attached as Exhibit 2). Again, on November 17, 2006, counsel for the Poultry Growers requested in writing that the State provide these non-parties with information about their own property that the State obtained through invasive sampling (attached as Exhibit 3). To date, the State has not provided the data, nor has the State responded to the November 17, 2006 written request. The Court's May 31, 2006 Order (Dkt No. 757) and the Court's June 7, 2006 Supplemental Order [Dkt No. 796] are silent with regard to the State's duty to provide data to the Poultry Growers.

III. NATURE OF DISCOVERY DISPUTE

Poultry Growers are well aware that a dispute exists between the parties with regard to analytical data. Poultry Growers support and concur in the stated positions of Defendant Cobb-Vantress, Inc.'s First Motion to Compel Discovery [Docket No. 743] and Defendant Simmons Foods, Inc.'s Motion to Compel Discovery [Docket No. 844]. Nothing could be more basic in environmental litigation than the concept that "data are facts and facts are not protected by attorney work product." However, Poultry Growers are not parties to this action and do not intend to become embroiled in the alleged "attorney work product" discovery battle.

Poultry Growers are real property owners who have been forced to submit to invasive physical sampling of their respective properties. Poultry Growers have asked for, and been

denied by silence, information about their own property that the State obtained because this Court ordered the Poultry Growers to submit to the invasive sampling.

IV. PUBLIC HEALTH CONCERNS

Although the Poultry Growers believe that common courtesy should have been sufficient impetus to cause the State of Oklahoma to provide copies of analytical data to each owner of real property invasively sampled by the State, another imperative exists, according to the State - public health. The State justified its request for expedited discovery by crying “danger, danger, health risks!”

In its Motion for Leave to Conduct Limited Expedited Discovery [Dkt No. 210], the State stated the following (pertinent pages attached as Exhibit 4):

Page 4: “The State of Oklahoma’s investigation of the Poultry Integrator Defendants’ waste disposal practices has revealed that certain contaminants associated with the land disposal of poultry waste exist at levels within the environment such that they ... pose a risk to human health ...”

Page 5: “Similarly, ... poultry waste from the Poultry Integrator Defendant’s operations ... such as fecal bacteria ... move from the poultry houses onto the land and into the waters of the IRW where they threaten the health of people using the water.”

Page 9: “The State of Oklahoma’s scientific investigation has revealed that the water in the IRW contains levels of bacteria which pose a danger to human health ... That investigation has also revealed evidence that ground water, including water in the numerous springs in the IRW, has been contaminated so as to be a hazard to persons who drink from such sources.”

Further, the State verbally informed the Court in the March 23, 2006 hearing on its Motion for Leave to Conduct Limited Expedited Discovery [Dkt No. 210], that (pertinent pages attached as Exhibit 5):

Page 27: “The delay of this case, though, must be viewed as a very serious matter because we are dealing with very real and vibrant health risks, public health risks.” (Mr. Bullock)

Page 35: “We need to proceed because the risks to human health are very real. The danger to people, ..., whether they are drinking of the wells, ... there is a real risk to people there.” (Mr. Bullock)

As the State is well aware, the Poultry Growers almost without exception utilize springs and water wells for their drinking water supply. The Poultry Growers work every day with the allegedly contaminated soil and the chicken litter which the State alleges contaminates the soil and water. The Poultry Growers are the immediate “at risk” public about whom the State purports to be so concerned.

If the State is right and if the data gathered by the State through its invasive sampling proves that the health risk is real, how can the State justify not providing that data to the “at risk” Poultry Growers?

V. PRECEDENT FOR PROVIDING THE DATA TO POULTRY GROWERS

It is particularly troubling to the Poultry Growers that the State has promised “Results of any sampling on your property will be mailed to the address provided on this form when they are available” to those real property owners within the Illinois River Watershed that voluntarily provide access for “... an environmental study in eastern Oklahoma and western Arkansas,” (*Access Agreement Form/Environmental Study and Monitoring Program* attached as Exhibit 6)

If the State is providing data to volunteers, surely those, such as Poultry Growers, who have involuntarily provided access should receive information about their respective properties.

VI. CONCLUSION

WHEREFORE, these Poultry Growers request that the Court provide further clarification of the Court's May 31, 2006 Order, and June 7, 2006 Supplemental Order. As discussed above, common courtesy has not been enough to cause the State to provide the data obtained through invasive sampling. Further, the State's refusal indicates a callous disregard for the health of the very people the State believes are most "at risk." As a result, the Poultry Growers respectfully ask that the Court confirm that the Court intended, and now specifically orders, the State to provide to the Poultry Growers the data obtained through the invasive sampling authorized by the Court.

Respectfully submitted,

s/ D. Kenyon Williams, Jr.

Michael D. Graves, OBA #3539

D. Kenyon Williams, Jr., OBA #9643

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

320 South Boston Avenue, Suite 400

Tulsa, OK 74103-3708

Telephone (918) 594-0400

Facsimile (918) 594-0505

ATTORNEYS FOR POULTRY GROWERS

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2006, a copy of the above and foregoing was mailed via facsimile to the following counsel of record:

C Miles Tolbert

Secretary of the Environment
State of Oklahoma
3800 N. Classen
Oklahoma City, OK 73118
405-530-8800
Fax: 405-530-8990

William H Narwold

Motley Rice LLC (Hartford)
20 Church St., 17th Floor
Hartford, CT 06103
860-882-1676
Fax: 860-882-1682

and that an electronic version of the same was sent this date to the following:

Douglas Allen Wilson

Email: Doug_Wilson@riggsabney.com

Elizabeth C Ward

Email: lward@motleyrice.com

Frederick C Baker

Email: fbaker@motleyrice.com

James Randall Miller

Email: rmiller@mkblaw.net

John Trevor Hammons

Email: thammons@oag.state.ok.us

Louis Werner Bullock

Email: lbullock@mkblaw.net

Melvin David Riggs

Email: driggs@riggsabney.com

Richard T Garren

Email: rgarren@riggsabney.com

Robert Allen Nance

Email: rnance@riggsabney.com

Sharon K Weaver

Email: sweaver@riggsabney.com

W A Drew Edmondson

Email: fc_docket@oag.state.ok.us

David Phillip Page

Email: dpage@mkblaw.net

Dorothy Sharon Gentry

Email: sgentry@riggsabney.com

Kelly S Hunter Burch

Email: fc.docket@oag.state.ok.us

s/D. Kenyon Williams, Jr. _____

D. Kenyon Williams, Jr.

686162.1:712304:00550